

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )  
  
RAQUEL MARTINEZ, Employee, )  
 )  
Claimant/Petitioner, )  
 )  
-vs.- )  
 )  
SPARTANBURG COUNTY )  
SHERIFF'S OFFICE, Employer, )  
and SOUTH CAROLINA )  
ASSOCIATION OF COUNTIES )  
SELF INSURANCE FUND, Carrier, )  
 )  
Defendants/Respondents. )  
\_\_\_\_\_ )

COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT  
CASE NO.: 2017-CP-42-3726

ORDER DENYING RULE 59(e)  
MOTION TO ALTER OR AMEND

**RECEIVED**  
AUG 15 2019  
SC Court of Appeals

This matter came to be heard before me in Spartanburg, South Carolina on December 20, 2018. Present at the hearing were the Petitioner's attorney, Chadwick D. Pye, Esquire, as well as the Respondents' attorney, L. Brenn Watson, Esquire. The purpose of the hearing was to consider the Respondents' Rule 59(e), S.C.R.C.P., Motion to Alter or Amend filed on October 12, 2018.

The Respondents' motion seeks to alter or amend the Order of this Court filed on October 3, 2018. The motion was timely filed within 10 days after notice of the filing. Ordinarily, a Rule 59 motion is necessary when the court overlooks an issue raised but not ruled on, however, it can also be used to request the court to reconsider the issues and arguments previously raised and ruled upon by the court. Consequently, a party is allowed to ask the court to reconsider its decision even if it mean rehashing all or part of the arguments previously presented. *Elam v. South*

*Carolina Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004); *see*: Alex Sanders and John S. Nichols, Trial Handbook for South Carolina Lawyers, 3<sup>rd</sup> Ed., §36.5, West Pub. Co. (2005).

As noted in the Court's Order this is the third time this worker's compensation claim has been before this Court for judicial review. The Respondents' motion contains 48 grounds the Respondents contend the Court should reconsider. For the most part these are the same grounds that have been raised, briefed, and extensively argued by able and competent counsel on both sides all three times this claim has been before the court for judicial review. The Court has afforded both parties an additional opportunity to argue the grounds raised at the hearing on December 20, 2018. Following the hearing, the Court encouraged both parties to attempt to resolve this case by voluntary agreement or mediation. The Court appreciates the efforts made by the parties in that regard but has been advised the parties remain at an impasse.

The Court has again carefully reviewed and reconsidered the record, Pleadings and Order in the current Petition for judicial review before the Court and from the preceding two times this claim has been before the Court for judicial review and has carefully reconsidered the arguments made by counsel. With the exception of grounds 8 and 9, the Court denies the Respondents' motion to alter or amend and reaffirms the Court's Order.

As to Respondents' ground 8 to alter or amend alleging the Court erred in finding only Captain Denton and the Petitioner testified at the hearing before the

Commission, the Court clarifies the Order to explain the Court never meant to suggest Captain Denton and the Petitioner were the only witnesses who testified. The Court meant to say they were the only witnesses who testified about the relationship between the Petitioner and Officer Johnson whose infant child was tragically killed and about whether the conditions of the Petitioner's employment on the day in question were extraordinary and unusual.

As to Respondents' ground 9 to alter or amend alleging the Court erred in finding that the testimony of Captain Denton and the Petitioner was found credible, upon further review of the Commission's decisions it does not appear either the hearing Commissioner or the Appellate found the witnesses were credible. No findings were made whether the witnesses were or were not credible. The Court agrees credibility determinations are reserved to the Commission. *Brown v. Peoplelease Corp.*, 402 S.C. 476, 741 S.E.2d 761 (Ct. App. 2013); *O'Banner v. Westinghouse Electric Corp.*, 319 S.C. 24, 459 S.E.2d 324 (Ct. App. 1995). Accordingly, the Court strikes the words "both of whom were found credible" found on page 2 of the Order.

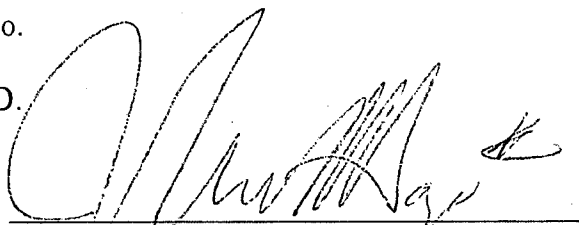
IT IS HEREBY ORDERED that the Respondents' motion to alter or amend the Court's Order with the exception of grounds 8 and 9 is denied; and

IT IS HEREBY ORDERED that the Court clarifies it did not mean to suggest Captain Denton and the Petitioner were the only witnesses who testified at the hearing before the Commissioner; and

IT IS HEREBY ORDERED that the Court amends page two of its Order to delete the words, "both of whom were found credible," with reference to Captain Denton and the Petitioner; and

IT IS HEREBY ORDERED that an Amended Order reflecting the changes referred above is attached hereto.

AND IT IS SO ORDERED.



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J. Mark Hayes, II, Circuit Court Judge  
Court of Common Pleas, Seventh Judicial Circuit

Spartanburg, South Carolina

11<sup>th</sup> day of May, 2019.